



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: February 08, 2024

+ W.P.(C) 1828/2024, CM APPL. 7643-7644/2024

(49) EX AC UT VINAY KUMAR PANDEY Petitioner

Through: Mr. Rakesh Kumar Singh, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday and
Mr. Krishnan V., Advocates and Ms.
Archana Surve, GP

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“1. Admit and allow the present writ petition and set aside the judgment and final order dated 15.02.2019 in OA 1493 of 2016 passed by Hon'ble Armed Forces Tribunal, Principle Bench, Delhi .

2. Quash the order of the respondent vide letter dated 03.01.2013 (Annexure- A-7), 05.06.2014 (Annexure A-9) and letter dated 16.05.2016 (Annexure A-1) vide the claim of disability pension had been rejected by the respondent.



3. Direct the respondent to pay the disability pension @40% (Broad banding 50%) w.e.f. 11.08.2012 along with interest@ 10% p.a.

4. Pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice and to meet the ends of justice."

2. The challenge in this petition is to an order dated February 15, 2019 passed by the Armed Forces Tribunal (AFT in short), Principal Bench, Delhi in OA No.1493/2016, whereby the Tribunal has dismissed the OA filed by the petitioner by stating in paragraphs 8 and 9 of the impugned order as under:

"8. Having given careful consideration to the arguments on both sides, we find that the issue before us is, whether the applicant, who reported sick for a mental disorder within one week of his enrolment, and was invalided out subsequently after being found to be suffering from. 'Other Non Organic Psychosis' can be granted disability pension after declaring his disability as attributable/ aggravated by military service.

9. We find that the applicant was detected with a mental disorder within a week of his joining after enrolment, even before his basic training had commenced. We take note of the fact that GMO(MP) 2002 has mentioned 'Mental Disorder' in the list of diseases which escape detection at the time of medical examination conducted prior to enrolment. Thus, we agree with the respondents that the applicant was suffering from 'Other Non Organic Psychosis' even before his enrolment and he had wilfully concealed the same during his medical examination at that time. Hence, his OA is liable to be dismissed."



3. The challenge of the petitioner in the OA, before the AFT was to an order dated May 16, 2016, rejecting the second appeal by the Air Headquarters (Directorate of Veterans) against the decision dated August 10, 2012 of the respondents to invalidate him out of service on the ground of medical disability "*other non Organic Psychosis*" with a prayer that he should be granted disability pension with effect from date of discharge @ 50% after broad-banding/rounding off.
4. The facts which are noted from the record are that the petitioner was enrolled as an Airman in the Indian Air Force on December 28, 2011. He joined Air Force Station Belgaum for training on December 31, 2011. On January 07, 2012 before the formal training had commenced, the petitioner had brought to the attention of the medical authorities the oddities of behaviour in the form of talking irrelevantly and not sleeping. He was admitted for three days as a case of insomnia and discharged on January 09, 2012 after a session with the counsellor.
5. It appears that his odd behaviour continued throughout the first month after which he was re-admitted in the hospital for observation and psychiatric evaluation. The concerned psychiatrist at Civil Hospital, Belgaum, diagnosed the petitioner as a case of "*Catatonia, psychomotor retardation, depressed mood and auditory hallucinations*". Subsequently, he was transferred to the Command Hospital (Southern Command), Pune where on the basis of the opinion given by the Associate Professor (Psychiatry) at AFMC Pune, the petitioner was invalidated on August 10, 2012.



6. The case of the petitioner before the Tribunal was that he was found medically fit by the medical authorities prior to his enrolment into Air Force and that any disease or injury detected or sustained thereafter should be considered as attributable/aggravated by military service.

7. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of "*Dharamvir Singh Vs UOI & Ors (Civil appeal No. 4949 of 2013)*" and the judgment dated June 25, 2014 in Civil appeal No. 5605/2010 titled "*Sukhvinder Singh Vs. Union of India & Anr.*"

8. Whereas the case of the respondents before the Tribunal was that the petitioner was found to be suffering from a mental disorder in the first week after enrolment, that is even before commencement of the basic training, which is indicative that he was suffering from the disease even at the time of his initial medical examination, and that he had concealed the same from the medical authorities. It is also their case that during the medical board, at the time of his enrolment, the disease could not be detected.

9. The respondents have relied upon paragraph 7 of Chapter II of the Guide to Medical Officers (Military Pensions) 2002, which reads as under:

"6. Further, the respondents, while admitting that the applicant was declared fit by the medical board at the time of his enrolment, contend that the disease could not have been detected at the time of his medical examination. In this regard, respondents refer to Para 7 of Chapter II of Guide to Medical Officers (Military Pensions) 2002, which states:

"7. The following are some of the diseases which ordinarily escape detection on enrolment:

(a) xxxx

(b) xxxx



(c) xxxx

d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member, e.g. GASTRIC and DUODENAL ULCERS, EPILEPSY, MENTAL DISORDERS, HIV INFECTIONS.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) xxxx. ""

10. It was their case that his disease 'Other non Organic Psychosis' was a form of a mental disorder, which escaped detection, and thus manifested immediately after his joining service for training and it is also their case that at the time of recruitment medical examination, an individual is advised investigation for mental disorders only if there is an indication/illness in the medical history given by the individual.

11. Thus, as the petitioner had not indicated the fact that he is suffering from any such illness/disease, the same could not be detected at the time of his enrolment. They justified the impugned action which has been taken against the petitioner.

12. Having heard the learned counsel for the parties, the primary ground on which the Tribunal has rejected the claim of the petitioner for disability pension is that the petitioner was detected with mental disorder within one week of his joining after enrolment even before his basic training had commenced. In other words, that the disease could not be said to be attributable to the military service.

13. In the given facts of this case, we agree with the conclusion drawn by the Tribunal that the disease having been detected within one week of his joining after enrolment, the same could not be attributable to the military



service. It follows if the disease is not attributable to the military service, the petitioner could not have been given the disability pension as sought by him in the OA.

14. We find no merit in the petition, the same is dismissed alongwith the pending applications.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 8, 2024/So..